

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SALLIE STRYKER,

Charging Party,

v.

ANTELOPE VALLEY COLLEGE FEDERATION
OF TEACHERS,

Respondent.

Case No. LA-CO-1135-E

PERB Decision No. 1624

April 28, 2004

Appearance: Sallie Stryker, on her own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Sallie Stryker (Stryker) of a Board agent's dismissal. The charge alleged that the Antelope Valley College Federation of Teachers (Federation) violated the Educational Employment Relations Act (EERA)¹ by removing Stryker from the negotiating team because of personal conflict with the Federation's chief negotiator in violation of the Federation's internal process. Stryker further alleges that the Federation's conduct was discriminatory and retaliatory. Stryker alleged that this conduct constituted a violation of EERA section 3543.6(b).

The Board's recent decision in California State Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S (CSEA), issued the same date as the dismissal letter, is determinative of portions of this case. Upon review of the record and in light of our

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

decision in CSEA, the Board affirms the Board agent's dismissal consistent with the discussion below.

BACKGROUND

According to the charge, as amended, Stryker has been employed as an adjunct professor of sociology at Antelope Valley College (College) since 1992. On October 22, 2002, Stryker received a letter from Federation President Susan Lowry that the Federation's executive council had voted 4 – 1 to remove Stryker from the negotiating team. The Federation pays negotiating team members for their participation. Stryker alleges that these events were precipitated by the chief negotiator's threat to resign because of alleged insults by Stryker. Stryker denies ever making the alleged comments and thus contends that she was unjustly removed from the team.

The Federation's bylaws contain an internal dispute resolution procedure.² Stryker alleges that the Federation's failure to follow this provision in its bylaws denied her constitutional right to due process. She later amended her charge to allege, instead of denial of due process, that the Federation had not established reasonable provisions for dismissal of individuals from negotiating teams. She acknowledges that Section 5 of the Federation's bylaws covers an internal union matter. Stryker argues, however, that the term membership in

²Section 5 of the Federation's bylaws, entitled Federation Review Panels, provides in pertinent part:

The Executive Council hereby establishes a procedure for selecting an arbitration panel to settle internal [Federation] disputes. This panel shall be available to hear complaints from member(s) concerning action by the Federation which the member(s) alleges adversely affects his/her status or rights as a member of AFT or of the bargaining unit. The complainant must exhaust all remedies provided in the constitution and bylaws of the Federation before bringing a matter to the Federation Internal Review Panel.

EERA section 3543.1(a) should be applied more broadly to cover various types of membership, including membership on the negotiating team and so should apply here.

Stryker also alleges that the Federation has discriminated against her for her efforts to advance programs benefiting minority teachers. She claims that the College violated the 60 percent rule, and when she complained, the Federation would not pursue her claim.³ She alleges that few minorities teach at the College or are in the Federation and the American Federation of Teachers (AFT) leadership, and that the Federation and AFT do not assist in promoting an increased presence of permanent minority faculty at the College.

Stryker alleges that her removal from the team further violated Section 3543.6(b) by interfering with her right to meet and negotiate with her employer and discriminating against her for reasons which are very confused. She alleges that the chief negotiator, with whom she had the dispute, was not removed from the negotiating team, and so Stryker was treated differently from her. She further alleges that her removal from the team affects the employer-employee relationship since she is an excellent negotiator and her removal occurred in the middle of negotiations with the College. She again asserts that she was not afforded due process by the Federation, that State agencies are subject to the federal and State constitutions, and therefore, PERB has jurisdiction over her due process claim.

Stryker finally contends that she is filing this charge against the Federation as both a member and an employee and thus alleges violations of both EERA sections 3543.1(a) and 3543.6(b).

In the dismissal, the Board agent found that Stryker did not state a prima facie case for discrimination/retaliation since her removal from the negotiating team was an internal union

³Stryker explains the 60 percent rule as a requirement that part-time faculty who work more than 60 percent time for 3 semesters must be placed in a permanent position.

matter and Stryker has provided no facts showing a substantial impact on the employer-employee relationship so as to render the allegation within the purview of the Board. The Board agent also found that Stryker failed to state a prima facie violation of EERA section 3543.1(a). The Board agent further dismissed Stryker's allegation that she was denied the right to meet and confer with her employer since, under EERA, that right is afforded only to employee organizations, not to individuals, and therefore, Stryker lacks standing to assert that right. Finally, the Board agent dismissed the allegations that Stryker was denied her constitutional right to due process and that Stryker was the victim of racial discrimination. The Board agent explained that the Board lacks jurisdiction over such alleged violations.

DISCUSSION

Stryker did not appeal the Board agent's determination regarding her claim of discrimination based upon her protected conduct but instead focused her appeal on discrimination based upon race.⁴ The Board agent is correct that race and race discrimination do not hold protected status under EERA. (California School Employees Association, Chapter 245 (Waymire) (2001) PERB Decision No. 1448.) Rather, EERA protects the rights of employees "to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." (EERA sec. 3543.) EERA therefore does not protect against race-based discrimination; and consequently, the Board lacks authority to decide these issues.

Stryker also argues that the Federation unlawfully removed her from its negotiating team in violation of EERA section 3543.1(a). In so doing, she alleged that the Federation violated EERA section 3543.6(b) by interfering with her protected rights. The Board recently

⁴As Stryker has not appealed the claim of discrimination under EERA, the Board will affirm the dismissal of that claim but declines to adopt the Board agent's analysis.

ruled on similar facts and statutes in CSEA. In CSEA, the charging parties alleged that the Association unlawfully removed them as chairpersons of their respective bargaining unit negotiating councils (BUNC) in violation of the Ralph C. Dills Act (Dills Act) sections 3515.5 and 3519.5(b)⁵, provisions parallel to those allegedly violated in this matter. The Board held that the Association did not violate Section 3515.5 in that removal from membership of the BUNC differed from suspension or dismissal from membership in the employee organization, which is the essence of a violation of Section 3515.5. As a result, the Board also rejected the charging parties' claim for interference with protected rights under Section 3519.5(b). In CSEA, the Board confirmed its reluctance to interfere in the internal affairs of employee organizations unless there was a showing of impact on the employer-employee relationship and found no such showing in that case.

Applying CSEA to the instant matter, Stryker was removed from the negotiating team, not from membership in the Federation. Therefore, she has not alleged a violation of Section 3543.1(a), and consequently, interference with protected rights under Section 3543.6(b). Stryker however argues that her removal from the negotiating team had an impact on the employer-employee relationship in that she no longer could meet and confer with the employer. Under Board precedent, Stryker lacks standing to assert the right to meet and confer with the public school employer as that right is solely afforded to employee organizations. (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667; State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) We also find that Stryker did not allege specific facts to show that the remainder of the team was unable to represent adjunct professors without her participation.

⁵The Dills Act is codified at Government Code section 3512, et seq.

One item not addressed by the Board agent in the dismissal was Stryker's allegation that since she was paid as a member of the negotiating team, she was filing the unfair practice charge not only as a member of the Federation, but as a Federation employee. Public school employer is defined under Section 3540.1(k) as:

[t]he governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

Under EERA section 3540.1(j), public school employee is defined as "any person employed by a public school employer" Under PERB Regulation 32602,⁶ an unfair practice charge may only be filed by an employee, employee organization, or employer against an employee organization or employer. The Board thus lacks authority to adjudicate disputes against the employee organization in its role as employer. The charge against the Federation in its role as employer should thereby be dismissed.

In light of the above, we find that Stryker has failed to state a prima facie violation of EERA and affirm the Board agent's dismissal consistent with the above discussion.

ORDER

The unfair practice charge in Case No. LA-CO-1135-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neima joined in this Decision.

⁶PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.